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JOHN T. FEY, C

Supreme Court of the United States

No. 803

HANDY CAFE INC.,
APPELLANT,

v.

COSTELLO DISTRIBUTING COMPANY, INC.,
APPELLEE.

ON APPEAL FROM THE SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

JURISDICTIONAL STATEMENT

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OCTOBER TERM, 1956

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v.

COSTELLO DISTRIBUTING COMPANY, INC.,
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ON APPEAL FROM THE SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

JURISDICTIONAL STATEMENT

Appellant appeals from the decision and judgment (decree) of the Supreme Judicial Court for the Commonwealth of Massachusetts and the denial of its motion to dismiss the proceedings for lack of jurisdiction entered finally upon November 28, 1956 refusing to vacate a decree of the Supreme Judicial Court refusing to vacate the appointment of a receiver of the property of the Appellant Corporation. It submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below

The Court below dismissed the appeal heard by it without opinion and on rescript only. It further denied the motion to dismiss for lack of jurisdiction in the Court without giving its reasons therefore although the provisions of General Laws Chapter 211 section 9 requires that the reasons for decision be given. Copies of the reasons given for dismissal of appeal in September 1956 is attached hereto as part of the record on appeal.

Jurisdiction

This suit was brought to obtain protection of its property by the Appellant under the provisions of General Laws chapter 214 section 22. The Superior Court for the County of Suffolk, Massachusetts had previously appointed a receiver for the property of the Appellant, in the opinion of the Appellant without jurisdiction or right in law or equity therefor, as appears herein. The said section of General Laws gives the Supreme Judicial Court jurisdiction to protect the rights and property of the parties under the conditions here prevailing. Application was made thereto. The said Court refused to vacate the said order of appointment of a receiver or to order the property released. The law of Massachusetts concerning the effect of such refusal of the Supreme Court in denying a petition to vacate the appointment of a receiver is set out in the case of *Wax* v. *Monks*. See p. 5 for excerpt. The denial of a motion to vacate the appointment of a receiver is the equivalent of a new appointment of the receiver. Therefore the decision is appealable under the laws of both State and Nation.

The final action of the Supreme Judicial Court was had on November 28, 1956; Notice of Appeal was refiled in that

court on December 28, 1956. The jurisdiction of the Supreme Court to review this decision by direct appeal in conferred by Title 28, United States Code, Sections 1257 and 2101. The following Decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case. *James Stewart & Co.* v. *Sadrakula Admx.*, 309 U.S. 94; *Reconstruction Finance Corporation* v. *Beaver County*, 328 U.S. 204.

The Constitution of the United States Sections involved are; Article I section 8, cl. 4; Article VI, cl. 2; Amendment fourteen, Section 1; Amendment 5; Amendment 4.

The Statutes of the United States involved herein are: U.S.C. Title 21 sections 2a and following sections construed with Article I section 8 of the Constitution of the United States; Title 28 of the U.S. Code section 2072 and rules made in pursuance thereof including Rule 41b of the Federal Rules of Civil Procedure; Title 11 sections 11a; Section 18a; and b; and g.

Statement

Appellant is a Massachusetts corporation of Boston. In early April 1954 the several alleged creditors not including the Appellee filed an involuntary petition in the United States District Court for the District of Massachusetts. The Appellant moved for dismissal. Notice in accordance with statute was given to all creditors of motion to dismiss. The said motion of the Appellant was allowed and the case dismissed on June 11, 1954.

In the interim the Appellee instituted an action at law against the Appellant by writ dated March 23, 1954 and returnable to the Municipal Court of the City of Boston on April 17, 1954. No service of process was ever made thereon on any one representing the defendant (appellant). See page 1 of Appeal Record. Thereafter without notice

of default or of pendency of the action the said court entered a default. This contrary to the provisions of G.L. c. 231, sec. 58. Thereafter judgment was entered without specific order of court on the basis of a declaration in two counts which exceeded the ad damnum of the writ and without waiver of either count. The amount of the judgment cannot be reconciled with any pleadings in court. The surmise is that the clerk entered judgment on one count disregarding the other count in the declaration. No order of court entered therefore. See pp. 1 and 2 of record.

Thereafter no demand with nulla bona return was made. See Record p. 2. This left the probability of satisfaction out of goods of the Appellant possible without destroying its existence. The judgment in the meantime was entered for an illegal claim. The plaintiff being a liquor wholesaler making claim that he extended credit to a liquor retailer for more than ninety days contrary to G.L. c. 138, section 25, and construed by *J. J. Sullivan Inc.* v. *Canns Cabins Inc.,* in 309 Mass. 519. Thereafter the Superior Court entered an order appointing a permanent receiver, on the strength of this claim. The petition for said appointment copy of which is incorporated in the record on appeal designated Bill of Complaint, appears to be a petition in involuntary bankruptcy in the state courts. It alleges the essentials of such a petition namely that the petitioner is a creditor of the debtor, that the debtor is insolvent, that the debtor has committed that which would in the federal courts be construed as an act of bankruptcy, and prays that a receiver be appointed to do all acts necessary for a final settlement of the affairs and business of the Appellant and that suit has been brought in behalf of all those desiring to join in. Every necessary averment is included to render this petition or so-called bill of complaint an attempt to liquidate the assets of the Appellant on the basis of alleged insolvency and for distribution of said

assets among the creditors. The said proceedings appear to violate the construction of the United States laws in *Gross* v. *Irving Trust Co.*, which states that the U. S. Bankruptcy Court has exclusive jurisdiction of the administration of the estates of bankrupts, 288 U.S. 598; the Federal Bankruptcy power is paramount to and maybe so exercised by Congress as to exclude every competing or conflicting proceeding State or Federal. *Marine Harbor Properties Inc.* v. *Manufacturers Trust Company.* Power to establish uniform laws upon the subject of bankruptcy throughout the United States having been conferred upon Congress by the Federal Constitution and Congress having executed said powers such power became an exclusive power. See *Michaels* v. *Post*, 88 U.S. 398; *People of N. Y.* v. *Irving Trust Co.*, 288 U.S. 329.

The Superior Court with said record before it and with the additional acknowledgment of satisfaction of receipt of all amounts due still ordered the appointment of permanent receiver.

Protection was sought under a new proceeding in the Supreme Judicial Court under G.L. c. 214 section 22. There the law appeared to apply which is set forth in *Wax* v. *Monks*, in 327 Mass. 1 to the effect, ". . . a decree denying a petition to vacate the appointment of a receiver for lack of jurisdiction to appoint him is a final decree and appealable as such. . . . A refusal to revoke an appointment is much the same thing as an appointment. *Silver* v. *Kingston Realty Corp.*, 114 Conn. 349."

The allegations of fact in the original petition under G.L. c. 214 sec. 22 upon which this suit is based are all admitted. There is no answer or other responsive pleading filed and the facts remain uncontroverted even in the evidence taken by the Court and included in the record appeal. The case was presented to the Appellate Court the Supreme Judicial Court on review and at said hearing the

motion was offered and accepted by the full court seeking dismissal of all proceedings for lack of jurisdiction of the Court. The Court received argument on the appeal as well as upon the motion to dismiss all proceedings. It entered its decision on the appeal in September 1956 but held its denial of the motion until November 28, 1956. Appeal was taken prior to denial of motion and repeated after the denial of the motion. This accounts for the several appeals contained in said record appeal.

Questions Presented

Where a corporation has had an involuntary petition in bankruptcy filed against it and the said petition was dismissed on the debtors motion after full notice to the Appellee and all other creditors, did the Superior Court of Suffolk County on the very same alleged claim have the right to appoint a receiver for the liquidation of the assets of the Appellant upon the claim of one of the said creditors who lost in the Federal Court, that the said Corporation was insolvent and praying substantially that its assets be collected and sold and the proceeds distributed to all creditors. Said all of which creditors were unsuccessful in bankruptcy proceedings on the same claims before the United States District Court in bankruptcy at about the same time.

2) Whether or not said petitioning creditor could obtain a valid judgment under the laws of the United States while the said petition in bankruptcy was pending before the United States District Court upon an action to which the Appellant had no knowledge and was not in fact served with process in accordance with the laws of the state.

3) Whether the Courts of Massachusetts can deprive a corporation of its property under the statute known as G.L. c. 156 section 51 upon an execution had upon an illegal

claim as stated in the original declaration, without demand and a nulla bona return and without knowledge or notice being given to the Appellant of the original proceedings for judgment while the Appellant was defendant against a petition in bankruptcy in the United States Courts and after a release in full under seal had been received by the Appellant from the Appellee and said acknowledgment of satisfaction under seal had been delivered to the Court.

The Questions Are Substantial

The issues here raised appear to be substantial in that it appears from the record here that the Appellant complied with the provisions of all applicable United States Statutes. He was therefore entitled to the benefits conferred by them as well as being subject to their hardships. The dismissal of the petition in involuntary bankruptcy seems to require that the adjudication of the United States District Court should not be almost immediately disregarded by the State Courts of Massachusetts. The said dismissal should preclude the plaintiff appellee from having been defeated in the United States Courts from immediately seeking the very same answers in the state courts. The matters in the petition were adjudicated and the appellant should have been free from further harassment on said claims.

However, there is further claim of substance. The denial of due process of law by the Municipal Court is not to be lightly overlooked especially in the light of the refusal of the Supreme Judicial Court to order the Municipal Court to vacate said judgment entered without notice or opportunity to be heard. All appears in the record. Therefore the Appellant is subjected to complete loss of its property and existence without an opportunity to be heard upon the determination of whether or not there even exists a debt.

The very unusual part of the case is the filing and presentation of an acknowledgment of satisfaction of the claim of the Appellee several days prior to the appointment of the receiver and the destruction of the Appellant. The courts have not honored said acknowledgment of satisfaction under seal nor have they in the slightest impeached it. Again this appears to constitute a very substantial deprivation of the essentials of due process of law by the courts of Massachusetts of rights of the Appellant.

Further the entertainment of a Bill of Complaint seeking the same results as the Constitution and Laws of the United States reserve to the jurisdiction of the United States Courts exclusively seems to be a very substantial acquisition of jurisdiction without right by the Courts of Massachusetts.

The protection granted to parties required to defend themselves against improper petitions in bankruptcy under Sec. 11a of the Bankruptcy Act is of sufficient importance for special inclusion by act of Congress and is considered by it. The denial of such protection should be corrected. The adjudication of the United States District Court of dismissal should not be disregarded and overlooked. The rights of the Appellant are protected by said adjudication and it should not be doubly vexed by the losing petitioners or by those given notice under the Act who refuse to recognize the duties under the Act or voluntarily decide not to participate in the Bankruptcy proceedings. It will be noted that the Appellee was fully notified of the Motion for Dismissal in the United States District Court of the Bankruptcy Petition. It should not be permitted to disregard the procedures of said court and then attempt to destroy the Appellant by similar proceedings in the State Court.

The statements contained in the rescript in reference to the "The discretionary powers conferred on this Court by Section 22 to suspend the operation of a decree of the Su-

perior Court or to make proper interlocutory orders pending appeal do not authorize a decision by a single justice on the merits of appeal." However, in view of the issues in this case namely the contention that the Superior Court was without jurisdiction whatever of the cause of action, it would seem that the well established law of both the State and Nation would apply as stated in *Donnelly* v. *Montague*, 305 Mass. 14, 19 . . . The said opinion reads in part as follows: "The course adopted in *Fourth National Bank of Boston* v. *Mead*, 214 Mass. 549 of dismissing the appeal without reversing the erroneous decree, is not approved." The comment upon the question of seriousness of appeal by use of the term frivolous seems completely out of place. "The jurisdiction of the Court appearing to be lacking, should be reversed whenever the case is brought before an appellate court by any means possible in the particular case, whether appeal, exceptions, report, writ of error or bill of review cases cited" see page 22 for excerpt.

One of the means given by statutes of Massachusetts to litigants to protect their property and property rights is by application under G.L. c. 214 section 22. The reason why the same rule does not apply if it does not similarly apply does not appear clear. Therefore, it appears that the suggestion of frivolity is not quite in keeping with prior decisions of the highest court of Massachusetts.

Respectfully submitted,

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Appendix A

Text of Statutes Involved

G.L. c. 214 section 22

After an appeal has been taken from a decree of the Superior Court, the Supreme Judicial Court may, by an order, on terms or otherwise, suspend the execution or operation of the decree appealed from, pending the appeal, and may modify or annul any order made for the protection of the rights of the parties, pending the appeal; but until such order has been modified or annulled, the justice of the Superior Court by whom the order or decree appealed from was made, or any other justice of said court, may make any proper interlocutory orders, pending such appeal, including orders for the appointment of receivers, of injunction, of prohibition, and orders for continuing in force such orders previously made, or modifying or dissolving them. The justice who makes any such interlocutory orders may enforce them by appropriate proceedings pending the appeal."

G.L. c. 156 section 51

Receivers Appointment etc. Under the circumstances set forth in section fifty two of chapter one hundred and fifty five, or if a judgment has been recovered against a corporation, and it has neglected for thirty days after demand made on execution to pay the amount due with the officers fees, or to exhibit to the officer real or personal property belonging to it and subject to be taken on execution sufficient to satisfy the same, and the execution has been returned unsatisfied, one or more receivers may be appointed with the powers and duties provided in and subject to said section."

Section 52 of G.L. c. 155

If the charter of the corporation expires or is annulled, or if the corporation is dissolved as provided in section fifty, or if its corporate existence for other purposes is terminated in any other manner, the Supreme Judicial Court or Superior Court, upon application of a creditor stockholder or member, shall have jurisdiction in equity to appoint one or more receivers to take charge of its estate and effects and to collect the debts and property due and belonging to it, with the power to prosecute and defend suits in its name or otherwise, to appoint agents under them and to do all other acts which might be done by such corporation, if in being, which may be necessary for the final settlement of its unfinished business. The powers of such receivers and the existence of the corporation may be continued as long as the court finds necessary for said purposes.

Section 53 of G.L. c. 155

Receivers to pay debts and distribute Surplus:

The receivers shall pay all debts due from the corporation if the funds in their hands are sufficient therefor; and if they are not, they shall distribute them ratably among the creditors who prove their debts in the manner directed by any decree of the court for that purpose. If there is a balance remaining after the payment of debts, the receivers shall distribute and pay it to those who are justly entitled thereto as having been stockholders or members of the corporation, or their legal representatives."

BANKRUPTCY ACT

Section 11a. Amended by Act of July 7, 1952, sec. 5 Public Law 456 82nd Congress 2nd session effective October 7, 1952; "A suit which is founded upon a claim from

which a discharge woud be a release, and which is pending against a person at the time of the filing of a petition by or against him, shall be stayed until an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt such action may be further stayed until the question of his discharge is determined by the Court after hearing, or by the bankrupts filing a waiver of, or having lost his right to a discharge, or, in the case of a corporation, by its failure to file an application for a discharge within the time prescribed by the Act; Provided however, that such stay shall be vacated by the Court, if, in a proceeding under this Act commenced within six years prior to the date of filing of the petition in bankruptcy, such person has been granted a discharge, or has had a composition confirmed, or has had an arrangement by way of composition confirmed, or has had a wage earners plan by way of composition confirmed."

CHAPTER II—COURTS OF BANKRUPTCY

Creation of Courts of Bankruptcy and Their Jurisdiction

[¶ 141] [Grant of Powers of Bankruptcy]

Sec. 2a—The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to—

[¶ 142] [Adjudge Persons Bankrupt]

(1) Adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within their respective territorial jurisdictions for the preceding six months, or for a longer portion of the preceding six months than in any other jurisdiction, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States, and have property within their jurisdiction, or in any cases transferred to them pursuant to this Act; (*Amended by Act of July* 7, 1952, *Sec.* 2 (*a*)—*Public Law* 456—82*nd Congress, 2nd Session, effective October* 7, 1952.)

[¶ 143] [Allow or Disallow Claims]

(2) Allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates;

[¶ 144] [Appoint Receivers or Marshals]

(3) Appoint, upon the application of parties in interest, receivers or the marshals to take charge of the property of bankrupts and to protect the interests of creditors after the filing of the petition and until it is dismissed or the trustee is qualified; and to authorize such receiver, upon his application, to prosecute or defend any pending suit or proceeding by or against a bankrupt or to commence and prosecute any suit or proceeding in behalf of the estate, before any judicial, legislative, or administrative tribunal in any jurisdiction, until the petition is dismissed or the trustee is qualified: *Provided, however,* That the court shall be satisfied that such appointment or authorization is necessary to preserve the estate or to prevent loss thereto;

[¶ 145] [Punish Violations of Act]

(4) Arraign, try, and punish persons for violations of this Act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States;

[¶ 146] [Authorize Continuance of Bankrupt's Business]

(5) Authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates, and allow such officers additional compensation for such services, as provided in section 48 of this Act;

[¶ 147] [Bring in Additional Persons]

(6) Bring in and substitute additional persons or parties in proceedings under this Act when necessary for the complete determination of a matter in controversy;

[¶ 148] [Liquidate Estates]

(7) Cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided, and determine and liquidate all inchoate or vested interests of the bankrupt's spouse in the property of any estate, whenever under the applicable laws of the State, creditors are empowered to compel such spouse to accept a money satisfaction for such interest; and where in a controversy arising in a proceeding under this Act an adverse party does not interpose objection to the summary jurisdiction of the court of bankruptcy, by answer or motion filed before the expiration of the time prescribed by law or rule of court or fixed or extended by order of court for the filing of an answer to the petition, motion or other pleading to which he is adverse, he shall be deemed to have consented to such

jurisdiction; (*Amended by Act of July* 7, 1952, *Sec.* 2 (*b*)—*Public Law* 456—82*nd Congress, 2nd Session, effective October* 7, 1952.)

[¶ 149] [Close Estates]

(8) Close estates, by approving the final accounts and discharging the trustees, whenever it appears that the estates have been fully administered or, if not fully administered, that the parties in interest will not furnish the indemnity necessary for the expenses of the proceeding or take the steps necessary for the administration of the estate; and reopen estates for cause shown;

[¶ 150] [Arrangements and Plans]

(9) Confirm or reject arrangements or plans proposed under this Act, set aside confirmations of arrangements or wage-earner plans and reinstate the proceedings and cases;

[¶ 151] [Referees]

(10) Consider records, findings, and orders certified to the judges by referees, and confirm, modify, or reverse such findings and orders, or return such records with instructions for further proceedings;

[¶ 152] [Exemptions of Bankrupts]

(11) Determine all claims of bankrupts to their exemptions;

[¶ 153] [Discharge of Bankrupts]

(12) Discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases;

[¶ 154] [Fine and Imprisonment to Enforce Orders]

(13) Enforce obedience by persons to all lawful orders, by fine or imprisonment or fine and imprisonment;

[¶ 155] [Extradition of Bankrupts]

(14) Extradite bankrupts from their respective districts to other districts;

[¶ 156] [Enforcement of Act; Injunctions]

(15) Make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this Act: *Provided, however,* That an injunction to restrain a court may be issued by the judge only;

[¶ 157] [Punishment for Contempt]

(16) Punish persons for contempts committed before referees;

[¶ 158] [Appointment of Trustees]

(17) Approve the appointment of trustees by creditors or appoint trustees when creditors fail so to do; and, upon complaints of creditors or upon their own motion, remove for cause receivers or trustees upon hearing after notice;

[¶ 159] [Taxing Costs]

(18) Tax costs and render judgments therefor against the unsuccessful party, against the successful party for cause, in part against each of the parties, and against estates, in proceedings under this Act;

[¶ 160] [Transfer of Cases]

(19) Transfer cases to other courts of bankruptcy;

[¶ 161] [Ancillary Jurisdiction]

(20) Exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceedings pending in any other court of bankruptcy: *Pro-*

vided, however, That the jurisdiction of the ancillary court over a bankrupt's property which it takes into its custody shall not extend beyond preserving such property and, where necessary, conducting the business of the bankrupt, and reducing the property to money, paying therefrom such liens as the court shall find valid and the expenses of ancillary administration, and transmitting the property or its proceeds to the court of primary jurisdiction; and

[¶ 162] [Control of Debtor's Property]

(21) Require receivers or trustees appointed in proceedings not under this Act, assignees for the benefit of creditors, and agents authorized to take possession of or to liquidate a person's property to deliver the property in their possession or under their control to the receiver or trustee appointed under this Act or, where an arrangement or a plan under this Act has been confirmed and such property has not prior thereto been delivered to a receiver or trustee appointed under this Act, to deliver such property to the debtor or other person entitled to such property according to the provisions of the arrangement or plan, and in all such cases to account to the court for the disposition by them of the property of such bankrupt or debtor: *Provided, however,* That such delivery and accounting shall not be required, except in proceedings under section 77 and chapters X and XII of this Act, if the receiver or trustee was appointed, the assignment was made, or the agent was authorized more than four months prior to the date of bankruptcy. Upon such accounting, the court shall reexamine and determine the propriety and unreasonableness of all disbursements made out of such property by such receiver, trustee, assignee, or agent, either to himself or to others, for services and expenses under such receivership, trusteeship, assignment, or agency, and shall, unless such disbursements have been approved, upon notice to creditors

and other parties in interest, by a court of competent jurisdiction prior to the proceeding under this Act, surcharge such receiver, trustee, assignee, or agent the amount of any disbursement determined by the court to have been improper or excessive. (*Amended by Act of July* 7, 1952, *Sec.* 2 (*c*)—*Public Law* 456—82*nd Congress, 2nd Session, effective October* 7, 1952.)

[¶ 163] [Additional Powers]

b. Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated.

Appendix B

Copies of Opinions and Judgments Below

Brief Statement of the Grounds and reasons of the decision. This is an appeal from a decree by a single justice, dismissing a petition of the plaintiff under G.L. c. (Ter. Ed.) c. 214, sec. 22, as amended by St. 1948, c. 309, to vacate a decree of the Superior Court appointing a receiver for the plaintiff. It is alleged in the petition that an appeal from the appointment is awaiting entry in the Supreme Judicial Court. The discretionary powers conferred on this court by sec. 22 to suspend the operation of a decree of the Superior Court or to make proper interlocutory orders pending an appeal do not authorize a decision by a single justice on the merits of the appeal. There is nothing in the record which shows an abuse of discretion in dismissing the petition. The plaintiffs appeal from the dismissal is frivolous and double costs are imposed. G.L. (Ter. Ed.) c. 211, sec. 10.

A true copy attest.

FREDERICK L. QUINLAN, *Clerk*

Appendix C

Excerpt from *R. F. C.* v. *Beaver County*, 328 U.S. 204, 206.

"This appeal challenges the validity of a state statute sustained by the highest Court of the State and raises a substantial Federal question. We have jurisdiction under 28 U.S.C. 344(a)."

James Stewart & Co. v. *Sadrakula*, 309 U.S. 94; 97

"As a statute of the state necessarily was sustained against a contention that its application to these circumstances violated the provisions of the Constitution as to the exclusive authority of the United States over a post office site purchased with the consent of New York, this Court has jurisdiction under 237(a) of the judicial Code and the Act of January 31, 1928." Page 103 of said opinion, "But the authority of state laws or their administration may not interfere with the carrying out of a national purpose. Where the enforcement of the state law would handicap efforts to carry out the plans of the United States, the State enactment must of course give way."

In re Oliver, 333 U.S. 257,

"A person's right to reasonable notice of a charge against him and an opportunity to be heard in his defense, a right to his day in court, are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony and to be represented by counsel," on page 278 of said decision. "It is the law of the land that no man's life, liberty or property be forfeited as a punishment until there has been a charge fairly made and fairly tried in a public tribunal."

International Shoe Company v. *Pinkus et al.*, 278 U.S. 261, 265

The power of Congress to establish uniform laws on the subject of bankruptcies throughout the United States is unrestricted and paramount. Constitution Art. I, sec. 8 cl. 4. The purpose to exclude state action for discharge of insolvent debtors may be manifested without specific declaration to that end; that which is clearly implied is of equal force as that which is expressed. *New York Central RR. Co.* v. *Winfield*, 244 U.S. 147, 150; et seq. *Erie RR. Co.* v. *Winfield*, 244 U.S. 170. *Savage* v. *Jones*, 225 U.S. 501, 533 The general rule is that an intention wholly to exclude state action will not be implied unless when fairly interpreted an act of Congress is plainly in conflict with state regulation of the same subject. *Savage* v. *Jones*, supra. *Illinois Central RR. Co.* v. *Public Utilities Comm.*, 245 U.S. 493, 510. *Merchants Exchange* v. *Missouri*, 248 U.S. 365. In respect to bankruptcies the intention of Congress is plain. The national purpose to establish uniformity necessarily excludes state regulation. It is apparent without comparison in detail of the provisions of the Bankruptcy Act with those of the Arkansas statute that intolerable inconsistencies and confusion would result if that insolvency law be given effect while the National Act is in force. Congress did not intend to give insolvent debtors seeking discharge or their creditors seeking to collect claims choice between the relief provided by the Bankruptcy Act and that specified in state insolvency laws. States may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations. *Prigg* v. *Pennsylvania*, 16 Pet. 539, 617, 618. *Northern Pacific Ry.* v. *Washington*, 222 U.S. 370, 378 et seq. cases cited.

It is clear that the provisions of the Arkansas law

governing the distribution of property of insolvents for the payment of their debts and providing for their discharge or that otherwise relate to the subject of bankruptcies must be held to have been superseded. . . . In *Boese* v. *King*, 108 U.S. 379 it was said at p. 386: "It can hardly be that the court is obliged to lend its aid to those who neglecting or refusing to avail themselves of the provisions of the Act of Congress seek to accomplish ends inconsistent with that equality among creditors which those provisions were designed to secure. . . .
at page 268
"The enforcement of state insolvency systems whether held to be in pursuance of statutory provisions or otherwise would necessarily conflict with the national purpose to have uniform laws on the subject of bankruptcies throughout the United States. The passage of the Bankruptcy Act superseded the state law, at least insofar as it relates to the distribution of property and releases to be given." Page 263, "A state is without power to make or enforce any law governing bankruptcies that impairs the obligation of contracts or extends to persons or property outside the jurisdiction or conflicts with the national bankruptcy laws."

Excerpt from *Donnelly* v. *Montague*, 305 Mass. 14, 19: The judgment or decree of a court that lacked jurisdiction will be reversed by an appellate court whenever the case is brought before it by any means possible in the particular case, whether by appeal, exceptions, report, writ of error or bill of review. *Cary* v. *Daniels Manuf. Co.*, 4 Gray 201, 204, 205. *Gray* v. *Thresher*, 104 Mass. 373; *Dion* v. *Powers*, 128 Mass. 192; *Gray* v. *Dean*, 136 Mass. 128; *Sterlings* case 233 Mass. 485; *Morse* v. *Ohara*, 247 Mass. 183, 185; *Holt* v. *Holt*, 253 Mass. 411; *Assessors of Boston*

v. *Suffolk Law School*, 295 Mass. 489, 498; *Henry L. Sawyer Co.* v. *Boyajian*, 303 Mass. 311, 314. *Assessors* v. *Osbornes*, 9 Wall 567, 575; *Alexander* v. *Crollott*, 199 U.S. 580; *Piedmont & Northern Railway* v. *United States*, 280 U.S. 469, 478; *Gully* v. *Interstate Natural Gas Co.*, 292 U.S. 16; *United States* v. *Corrick*, 298 U.S. 435, 440. The course adopted in *Fourth National Bank of Boston* v. *Mead*, 214 Mass. 549 of dismissing the appeal without reversing the erroneous decree, is not approved."

No. 803. HANDY CAFE, INC., *v.* COSTELLO DISTRIBUTING CO., INC. Appeal from the Supreme Judicial Court of Massachusetts. *Per Curiam:* The appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is denied. *Angus M. MacNeil* for appellant. Reported below: 334 Mass. 707, 137 N. E. 2d 218.